Decision **PROPOSED DECISION OF ALJ MOOSEN** (Mailed 2/11/14)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Southern California Edison Company (U338E) and The City of Long Beach for Approval of an Infrastructure and Rate Proposal for Maritime Entities in the Port of Long Beach.	Application 12-12-027 (Filed December 28, 2012)

DECISION APPROVING SETTLEMENT

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DECISION APPROVING SETTLEMENT

1. Summary

This decision approves the uncontested settlement[1] proposed by the Southern California Edison Company (SCE), the City of Long Beach for the Port of Long Beach (the Port)[2] and the Office of Ratepayer Advocates (ORA)[3] as modified. In doing so, the decision addresses on-going permitting and environmental compliance activities and does not adopt one provision that would allow SCE to apply a different discount methodology in the future.

The decision authorizes rate discounts for existing and future Maritime Entities'[4] electric usage at the Port of Long Beach, and with certain exceptions, obligates SCE to install 66 kilovolt (kV) electric service facilities without charge for new Maritime Entities' electric load, as an integral part of the Port's electrification and expansion programs. The Settlement Agreement supports a

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[1] The Settlement Agreement for Rates and Infrastructure Applicable to Maritime Entities in the Port of Long Beach, filed by Joint Motion of Southern California Edison Company (U338E), the City of Long Beach and the Office of Ratepayer Advocates for Adoption of Settlement Agreement for the Rates and Infrastructure Applicable to Maritime Entities in the Port of Long Beach on July 11, 2013.

[2] The City of Long Beach is a California charter city, which includes the Harbor District, also known as, the Port of Long Beach (the Port, herein). SCE and the Port are also referred to herein as "the Joint Parties" where they are acting as such in support of their Joint Application, as captioned above.

[3] SCE, the Port and ORA are referred to herein as the "Settling Parties" where they are acting in support of their Motion for Adoption of Settlement Agreement and as signators to the proposed Settlement Agreement.

[4] The Settlement Agreement defines "Maritime Entities" as "container, stevedoring and shipping entities located within the real property owned in fee by the City of Long Beach within or adjacent to the Harbor District, including real property in fee acquired

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major environmental improvement program underway at the Port, the Green Port Policy, which includes a Clean Air Action Plan which is, in turn, heavily dependent on electrification. The Clean Air Action Plan represents hundreds of millions of dollars in capital investment by the Port for its Shore Power Program (also known as the "cold-ironing" program) and other programs that substitute electricity for diesel used by shipping vessels and in handling cargo at the Port.

The Port projects that maritime transportation electrification will result in major load growth at the Port over the next 20 years, moving from the current 55 megawatts (MW) to a projected 244 MW by 2030. Accordingly, the Port has already made and will continue to make substantial capital investments in its on-going major expansion and electrification infrastructure projects, totaling over an estimated $4.5 billion during the next 10 years. The Port points out that it is the second largest port in the nation for transpacific container cargo and serves as a leading gateway for trade in the United States and Asia. Nonetheless, the Port states that it faces significant increased competitive pressure from other large volume ports with the completion of the Panama Canal expansion expected in 2015, which will improve shipping access to and from the Gulf Coast and East Coast ports.

SCE's rate discount and infrastructure development activities under the Settlement Agreement will provide the necessary electric distribution facilities support for the Port and its existing and future Maritime Entity operations and will allow the Port to offer a number of incentives to retain and attract maritime

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by the City of Long Beach within or adjacent to the Harbor District, but excluding Pier H."

business. As such, the Settlement Agreement facilitates California's environmental stewardship goals of greater use of waterway transportation, including ports, transportation electrification and specifically, fuel-switching from diesel use in order to realize related air emissions reductions through the Port's Clean Air Action Plan, of which electrification is a significant component.

The Settlement Agreement includes key provisions that:

1) Provide for various rate discounts and specific rate treatments for existing and new Maritime Entities' accounts;
2) Obligate SCE to install and pay for 66 kV electric facilities for new load of all Maritime Entities that elect 66 kV service with some exceptions;
3) Provide a specific discount for new load of Maritime Entities that is equal to 50% of Contribution to Margin (CTM) from SCE's applicable tariffs;
4) Provide for changing the discount methodology for new load of the Maritime Entities if the Commission "adopts a standard Economic Development Rate (EDR) that is more advantageous to Maritime Entities than the methodology included in the Settlement Agreement";
5) Employ an imputed added facilities charge of $2.84/kilowatt (kW)-month for currently existing load at sub-transmission voltage and served at primary voltage with various applications of CTM, depending upon service voltage;
6) Authorize SCE to bill new load of Maritime Entities at sub-transmission rates unless the customer elects to be billed under the Otherwise Applicable Tariff (OAT) rate;
7) Require various updating and adjustment mechanisms;
8) Obligate SCE, in agreement with the Port, to file an advice letter every alternate General Rate Case (GRC) after the first six-years of the Settlement Agreement proposing to continue or modifying the marginal generation capacity cost (MGCC) factor, and or renew discount rates;

9) Obligate SCE, with input from the Port, to submit a report every three years on the progress of electrification and environmental remediation impacts from electrification at the Port;

10) Describe the ratemaking treatment of revenues received by SCE from Maritime Entities, and outlines the way in which the discount will be applied to bundled service and Direct Access customers.

11) Allow for periodic updates of marginal distribution costs and marginal energy cost inputs to the rates applicable to Maritime Entities;

12) Reduce the initial term of the marginal generation capacity cost factor in the discount calculation to six years (from the otherwise applicable 10-year initial Settlement Agreement term); and

13) Require periodic reporting on the progress of electrification and environmental remediation at the Port.

This decision, together with Resolution E-4573 which approved the SCE/Port of Long Beach (POLB) Services and Operating Contract (SOC), resolves issues that arose prior to this Application in negotiations between the Port and SCE, which were litigated but unresolved in favor of further negotiations in SCE's 2012 GRC and which have continued since that case concluded until the filing of the Joint Application that initiated this proceeding.[5]

This decision does not adopt the Settling Parties' request that the Commission authorize substitution of a different discount methodology if SCE requests and receives authority for a "standard economic development rate" in

[5] The 2012 Services and Operating Contract (SOC) recently approved by Resolution E-4573 provides access to the Port's municipal property to SCE to construct and operate electric distribution service for the Maritime Entities as SCE customers on the Port's property.

its service territory and that rate is more advantageous to Maritime Entities. That provision is not adopted as discussed herein because it is not supported by the record and is not shown to be in the public interest. This modification of the Settlement Agreement is made without prejudice to any future request, should the facts support such a change in the discounts adopted today.

2. Procedural History

Southern California Edison Company (SCE) and City of Long Beach for the Port of Long Beach (The Port) filed a Joint Application and Joint Prepared Testimony in support of the Joint Application on December 28, 2012.

The Office of Ratepayer Advocates (ORA)[6] filed a timely protest raising a number of issues and the Alliance for Retail Energy Markets (AReM) filed a timely response but did not raise specific issues. Constellation NewEnergy, Inc. filed a timely Motion for Party Status, which was granted at the Prehearing Conference (PHC). The Joint Parties filed a reply to address each of the ORA protest issues and the AReM response.

At the PHC held on March 8, 2013, the Joint Parties and ORA announced that settlement negotiations had commenced and requested adequate time in the schedule in order to continue. Following the PHC, the assigned Commissioner issued a scoping memo which, among other things, set a procedural schedule that included hearings in the event that settlement negotiations were not successful, but allowed for the time requested to continue those on-going settlement discussions.

[6] Formerly, the "Division of Ratepayer Advocates."

After requesting and receiving several extensions to the schedule and keeping the Administrative Law Judge (ALJ) informed on the progress of settlement negotiations, the active parties reached a settlement, noticed and held a settlement conference, and on July 11, 2013, filed a joint motion requesting adoption of their settlement.[7] The Joint Settling Parties' Motion stated that AReM and Constellation NewEnergy LLC had authorized them to state that they did not contest the settlement (attached to today's decision as Attachment 1.) No Comments were filed in response to the Motion for Adoption of the Joint Settlement

The Joint Motion and proposed Settlement Agreement were reviewed by the Assigned ALJ. On October 15, 2013, the ALJ issued a ruling requiring additional information and testimony in support of the proposed settlement to be filed and served no later than October 25, 2013. The Settling Parties filed that information on October 25, 2013 as Joint Filed Testimony in Support of Settlement Agreement,[8] as well as a motion to file confidential information under seal pending docket office approval. The Motion to file under seal was granted on November 1, 2013. The Settling Parties thereafter timely filed a public version and a confidential version of the Response of Southern California Edison Company, the City of Long Beach and the Office of Ratepayer Advocates

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[7] *The Joint Motion of Southern California Edison Company (U338E), the City of Long Beach, and the Division of Ratepayer Advocates for Adoption of Settlement Agreement for Rates and Infrastructure Applicable to Maritime Entities in the Port of Long Beach* filed July 11, 2013. Attachment A to the Motion, *The Settlement Agreement for Rates and Infrastructure Applicable to Maritime Entities in the Port of Long Beach* is referred to herein as the "Settlement Agreement."

[8] Identified and admitted as Exhibit 2, sponsored by Witnesses Thiessen, Levin, and Garwacki.

(Settling Parties) to the Administrative Law Judge's Ruling Requiring Additional Information and Exhibits under seal on November 1, 2013.[9]

Upon review of the filed materials, no further testimony or evidence was requested by the ALJ and the case was submitted by ALJ Ruling on January 13, 2013.

3. Summary of Authority Sought

3.1. The Joint Application

SCE and the Port filed a Joint Application for Approval of an Infrastructure and Rate Proposal for the Maritime Entities in the Port of Long Beach on December 28, 2012. In addition, the Joint Parties served the Joint Prepared Testimony of Southern California Edison Company and the City of Long Beach in Support of their Joint Application for Approval of Infrastructure and Rate (I&R) Proposals for Maritime Entities in the Port of Long Beach.[10] The I&R Agreement included in the Joint Application was one of two agreements before the Commission for approval at the time which were necessary to allow SCE access to the Port in order to continue provision of distribution level electric service to the Port and its Maritime Entity tenants. The September 20, 2012 I&R Agreement set forth terms covering rates and infrastructure applicable to existing and future Maritime Entity customers at the Port.[11] The Joint Application asked

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[9] Identified and admitted as Exhibit 3, sponsored by Witness Garwacki.

[10] Identified and Admitted as Exhibit 1, sponsored by Witnesses Jazayeri and Moro.

[11] The other agreement is the 2012 SOC, approved by the Commission on May 13, 2013 in Resolution E-4573. The Joint Motion of the Settling Parties to this proceeding point out that the proposed Joint Settlement in this case is dependent upon maintaining the SOC in effect. The Settlement Agreement states that should the 2012 SOC be terminated for any reason, the Settlement Agreement will also terminate. Section 4.b., at 8,

Footnote continued on next page

for approval of one of two contracts negotiated to implement a bilateral agreement covering rates and infrastructure expansion of SCE service and distribution facilities at the Port.[12]

The I&R Agreement proposal arose out of the major expansion and electrification project at the Port of Long Beach. The Joint Parties explained that allowing for substitution of shore-based electricity for on-board diesel generation by berthed ships would be critical to the Port's broader environmental goals set forth initially in the Port's Green Port Policy which includes the Clean Air Action Plan. The Port's Shore Power Program, also known as the "cold-ironing" program, allows for vessels to shut off their engines while at berth and utilize electricity from the pier to serve the many shipboard needs of the vessel. In addition, electricity will be available as a substitute for diesel in handling cargo at the Port.

The Joint Parties plan for the projected load growth from the current load of 55 MW to a projected 244 MW by 2030. Likewise, the I&R Agreement provides for new 66 kV distribution facilities to serve anticipated Maritime Entity load growth resulting from the expansion and electrification.

In addition, the Joint Parties' Application sought approval for certain ratemaking treatment to ensure a positive Contribution to Margin (CTM), discounted by 50%, from SCE's revenues received from the Port's Maritime Entities. The Joint Parties' proposed a ratemaking treatment as follows: revenues received from Maritime Entities served on the discounted rates would

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Settlement Agreement for Rates and Infrastructure Applicable to Maritime Entities in the Port of Long Beach.

first be applied to pay in full all non-bypassable charges[13] with any remaining revenues recorded to the Energy Resources Recovery Account (ERRA) and Base Revenue Requirement Balancing Account (BRRBA) in proportion to what the Maritime Entities' contributions to each account would have been if they were billed at their Otherwise Applicable Tariff (OAT).

3.2. ORA's Protest

ORA filed a timely protest asking the Commission to consider the Joint Application as an Economic Development Rate (EDR) proposal and impose requirements required for EDRs. ORA recommended two such requirements in particular: 1) the imposition of a floor price that provides a positive CTM sufficient to recover non-bypassable charges, and 2) application of the "but for" test to demonstrate that rate discounts are necessary for expansion and modernization or to prevent commercial operations from leaving the Port. ORA raised concerns with the term of the Joint Application and questioned whether SCE's shareholders should provide funding for the proposed discounts.

3.3. Reply to ORA Protest

The Joint Parties replied to the ORA Protest by explaining that the Joint Application should not be construed as a traditional EDR, but noted that the determination of CTM and calculation of the floor price in the Joint Application

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[12] The SOC and I&R Agreements settled outstanding issues raised initially prior to and in the context of SCE's 2012 GRC.

[13] "Non-bypassable charges were defined as Federal Energy Regulatory Commission (FERC)-jurisdictional transmission charges, Department of Water Resources (DWR) Bond charges, Public Purpose Programs (PPP) charges, and Nuclear Decommissioning (ND) charges.

were consistent with the floor price discount methodology adopted in Decision (D.) 07-09-016, as cited by ORA.

The Joint Parties also relied upon statutory support in Public Utilities Code §§ 701, 451 and 727 for the Commission's broad authority to approve their Application other than Pub. Util. Code §740.4 which addresses economic development rates. The Joint Parties reiterated the important environmental considerations they claimed supported special rates and cited recent Commission precedent for doing so in D.05-06-016 where the Commission approved a settlement seeking "authority to offer reduced rates and additional line extension allowances to agricultural customers who convert engines used for agricultural pumping from diesel fuel to electricity." The Joint Parties' noted Assembly Bill (AB) 32's policy goal of encouraging the electrification of the transportation sector as a means of reducing overall greenhouse gas emissions as well.

The Joint Applicants further responded to ORA's protest by emphasizing that the 2012 SOC Agreement, then still pending before the Commission in Advice Letter (AL) 2788-E, allowed for SCE to secure the Port's load growth as SCE customer load, thereby providing a larger kilowatt hour base over which to recover its fixed costs and potentially lower rates to all customers. They pointed to these potential ratepayer benefits as the reason that the Joint Parties also opposed requiring shareholders to fund the discounted rates and infrastructure charges.

3.4. April 22, 2013 ALJ Ruling – Applicability of California Environmental Quality Act (CEQA) to Application (A.) 12-12-027

On April 22, 2013 the assigned ALJ issued a Ruling directing the Joint Parties to submit additional documents discussed at the March 7, 2013 PHC seeking clarification of the Joint Parties' positions regarding the applicability of

General Order (GO) 131-D and California Environmental Quality Act (CEQA)[14] to the requested authorizations in this proceeding. Questions arose in response to the Joint Application's request for an order authorizing and directing SCE to install 66 kV electric distribution facilities as part of on-going Port expansion and electrification projects that have been taking place since 2006 as part of the Port's Green Port Program, specifically to implement the Clean Air Action Plan. The expansion and electrification construction projects necessarily include expansion of electric distribution infrastructure, including new substations and in some cases new distribution systems. At the PHC, Mr. Moro, General Manager of the Port of Long Beach, explained that the larger, overall Clean Air Action Plan program at the Port, of which electric infrastructure upgrades and additions are an integral part, were subject to extensive CEQA compliance activities by the City of Long Beach, acting as Lead Agency. In addition, because the Joint Application sought an order to "authorize and direct SCE to install 66 kV facilities…" the April 22, 2012 ALJ Ruling asked whether compliance with the Commission's GO 131-D was required at that time in conjunction with or as part of this proceeding.[15]

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[14] California Public Resources Code § 21080(b)(8).

[15] GO 131-D states, in part: Section III B: Permit to construct

> No electric public utility shall begin construction in this state of any electric power line facilities or substations which are designed for immediate or eventual operation at any voltage between 50 kV or 200kV or new or upgraded substations with high side voltage exceeding 50 kV without this Commission's having first authorized the construction of said facilities by issuance of a permit to construct in accordance with the provisions of Section IX.B, X, and XI.B of this General Order.

SCE submitted a Response to the April 22, 2013 ALJ Ruling on May 13, 2013. SCE's Response stated that GO 131-D compliance was complete for past construction that the Joint Application in this proceeding was exempt from CEQA pursuant to the CEQA Guideline 15273 but that planned and future construction under the I&R Agreement would be subject to CEQA review. Further, SCE clarified that GO 131-D and CEQA compliance obligations are not triggered by the Joint Application, stating "*the Infrastructure and Rate Agreement contemplates but does not authorize the utility construction of electric power line facilities or substations greater than 50kV.*" SCE stated that it would file the appropriate GO 131-D compliance materials once the status of future construction is certain both with respect to construction as well as the Port's CEQA compliance and environmental analysis regarding whether the projects will have significant environmental impacts.

The Port submitted a separate response to the April 22, 2013 ALJ Ruling with additional information and documents on May 13, 2013 along with a Notice of Availability for the same information and documents. The Port submitted a complete set of CEQA documents for projects that include the electrical infrastructure constructed or to be constructed as described in the Application to the extent that they are known or foreseeable at this time. In addition, the Port submitted a Draft Environmental Impact Report (EIR)/Emission Report (EIS) for particular planned future construction, the Pier S Project, that include electric infrastructure facilities that would be subject to the I&R Agreement, if adopted. Both SCE and the Port stated that the Pier S Project was the only electric infrastructure construction work currently planned for future construction. SCE stated that future electric infrastructure to which the proposed I&R agreement treatment would apply is not limited to this project.

SCE acknowledged that both GO 131-D and CEQA compliance would be necessary for the actual construction of the Pier S Project and other future electric infrastructure subject to the new I&R Agreement tariff.

3.5. Joint Settlement

The Joint Settling Parties asked the Commission to approve the Settlement Agreement, including Appendices A and B (attached to today's decision as Attachment 1), which resolves all disputed issues among them.

The major settlement terms are as follows:

The Rates under the Settlement Agreement will continue for a term of 10 years, with automatic renewals for additional five-year terms until December 31, 2037.

The rates will be recalculated during the initial 10 year and subsequent 5- year renewal terms to ensure positive CTM, calculated as described in the Settlement Agreement, Appendix B.[16] The unit marginal costs used to determine

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[16] CTM refers to revenues that enable recovery of the Marginal Costs of Service to Maritime Entities. Under the Settlement Agreement, "Marginal Cost of Service to Maritime Entities" means the calculation, on a monthly basis, of: 1) the marginal generation, distribution, and customers costs of servicing the Maritime Entity, including the MGCC Factor adjustment and the marginal distribution costs; 2) the transmission rate components applicable to the Maritime Entity; and 3) the sum of remaining nonbypassable rate components. Likewise, "MGCC Factor" means "marginal generation capacity cost factor," and is an adjustment to the marginal cost of generation used to calculate the Marginal Cost of Service to Maritime Entities and CTM, as described in Sections 4.e and 4.f of the Settlement Agreement and its Appendix A.

The Marginal Costs of Service to Maritime Entities assume that Maritime Entities are the "marginal customers" and are calculated to determine the incremental costs of serving those customers. This calculation is distinguishable from traditional cost of service ratemaking performed in SCE's GRC where recovery of SCE's fixed costs and long-term investments are part of the revenue requirement included in rates. The discounts approved today do not guarantee recovery of SCE's fixed and long-term

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CTM for new load will be updated concurrently with the implementation of every SCE GRC, Phase 2 Decision. The particular discounts adopted are as follows:

Existing load:

1) below 50 kV: will be charged subtransmission voltage rates for metered consumption plus an Imputed Added Facilities Charge. The existing Maritime Entity will pay the lower of its account's monthly bill at the OAT and service voltage or the bill calculated at the subtransmission voltage plus the Imputed Added Facilities Amount.
2) At or above 50 kV: will be charged the subtransmission voltage rate but will have the option of being billed for facilities used to step the voltage down to actual voltage at the Imputed Added Facilities Charge or at their current added facilities charge.

Subtransmission Rates and 66 kV Service for New Load:

Subject to four exceptions, new load of Maritime Entities will be billed at subtransmission voltage rates unless the customer elects the OAT. For all new load of Maritime Entities, SCE will install 66 kV electric facilities to serve such load at no cost to the new Applicant for service.

The Settlement Agreement further provides: 1) a MGCC Factor of 50% for an initial term of six years that will be further subject to review in a Tier 2 Advice Letter filed at the conclusion of SCE's 2018 GRC; 2) provisions for new load bill

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investment costs, which will necessarily be recovered from rates charged to all non-Maritime Entity SCE ratepayers. The ratemaking provisions of the Settlement Agreement require that SCE first use revenues received from Maritime Entities to pay in full all Non-bypassable Rate Components with the remaining revenues to be recorded on a functional basis to the Generation and Distribution sub-accounts of SCE's BRRBA in the same proportion that the revenues would have been allocated under the OAT. Settlement Agreement, Section 4.i.

calculations; 3) bill calculation related to positive or negative CTM; 4) specification and updating of marginal costs and marginal generation capacity cost to be as adopted in SCE's most recent GRC Phase 2 decision; 5) ratemaking treatment such that SCE revenues from Maritime Entities will be first used to pay in full all Non-bypassable Rate Components; and 6) reporting requirements for Port electrification and environmental remediation requiring SCE to submit a report every three years to the Energy Division via an information-only filing regarding the progress of Port electrification. The Report will include: 1) the MW of connected load at the Port; 2) a five year forecast of expected load growth; 3) MW hours (MWh) of recorded and forecast usage at the Port; 4) recorded and forecast SCE capital expenditures for upgrades to distribution facilities serving the Port; 5) a Port-derived estimate of the achieved environmental remediation impacts of Port electrification; and 6) an update to the Port's Clean Air Action Plan.

The Settling Parties stated that ORA proposed a number of modifications and safeguards to ensure that the Settlement Agreement was in the public interest that were incorporated, as follows:

1) A change in the method of computing marginal costs for certain customers,
2) Provisions for periodic updates of various inputs to the rates applicable to Maritime Entities,
3) Reduction in the initial term of the MGCC Factor in the discount calculation together with the mechanism to determine that factor after the initial term, and
4) A requirement for periodic reporting on the progress of electrification and environmental remediation at the Port.

The Settling Parties included ORA's recommendations and gained ORA's agreement to support the Settlement Agreement.

4. Discussion

Standard of Review and Grounds for Approval

To approve a settlement, Rule 12.1(d) provides that the Commission must find that the settlement is "reasonable in light of the whole record, consistent with the law, and in the public interest."

Depending upon the matter at hand, the Commission may examine a number of factors in making a determination under Rule 12.1(d). These may include: (1) the risk, expense, complexity, and likely duration of further litigation; (2) whether the settlement negotiations were at arms-length; (3) whether major issues were addressed; and (4) whether the parties were adequately represented.[17]

4.1. The Settlement Agreement provision allowing automatic substitution of future, Commission-adopted "standard economic development rate" discount methodology in SCE's service territory that does not exist today and is not pending in any application is not adopted.

The Settlement Agreement provides that if the Commission" adopts a discount methodology for standard EDRs in SCE's territory," and that "is more advantageous to Maritime Entities than the methodology set forth in Appendix A to the Settlement Agreement, SCE would use that Commission-adopted methodology in lieu of the methodology in Appendix A to calculate the discount for new load of Maritime Entities." (Settlement Agreement, Section 4.f., at 11-12.) SCE's last adopted EDR expired on December 31, 2012, without extension. No new proposal is pending before the Commission and there is nothing in the

[17] *See* D.10-10-035 (citing D.88-12-083, (1988) 30 CPUC2d 189, 222).

record to indicate if SCE has any intention of applying to establish a new EDR during the term of the Settlement Agreement.

This provision would allow SCE to grant an even lower discount (more advantageous to Maritime Entities) than that provided in the Settlement Agreement without an EDR in existence, criteria for approval or oversight by the Commission. In essence, the Settling Parties are asking for pre-approval of an automatic, but undefined, substitute discount methodology that does not now exist and therefore is wholly outside the record in this proceeding. As such, it is unreasonable, unsupported by the record and not shown to be in the public interest. Therefore, the Settlement Provision included in Section 4.f at 11-12 and the request for its approval in Section 4.n.6 should be approved. This decision does not preclude a future Petition for Modification seeking a change to today's adopted settlement rates should another EDR program be adopted in SCE's service territory for which the Maritime Entities can successfully demonstrate eligibility on the same basis that all other potential EDR participants will face.

4.2. Absent the "substitute discount" provision discussed above, the Settlement Agreement is Reasonable, Consistent with Law and the Public Interest

We address, separately, the first two requirements of all-party settlements and then follow with a discussion of the remaining two requirements as part of a broader assessment of the legal and policy merits of the settlement consistent with Rule 12.1(d), including factors mentioned above (risks and expense of further litigation, whether negotiations were at arms-length, etc.). With dismissal of the "new EDR" provision discussed above, we find that the settlement is reasonable in light of the record, consistent with law, and in the public interest. Moreover, with SCE and the Port's on-going CEQA compliance activities and

assurances regarding any further GO 131-D permitting compliance if needed, we are satisfied that no future action under CEQA or GO 131-D is required in this proceeding.

4.3. All Active Parties Sponsor Settlement

The settlement is uncontested, and jointly sponsored by the active parties SCE, the Port, and ORA. While the two other parties, Constellation New Energy, Inc and AReM, are not settlement signatories, they authorized the Joint Settling Parties to represent that they do not oppose the settlement and did not file comments on the Joint Settlement during the 30 day period following the Joint Parties' Filing (Rule 12.2).

4.4. Sponsoring Parties Fairly Represent Affected Interests

The three active parties fairly represent the affected interests. SCE represents the utility interests, the Port represents the interests of both the Port and the Maritime Entities receiving electric service at the Port and ORA represents the interest of utility consumers and ratepayers and is well-situated to assess the myriad policy ramifications of the settlement on those interests.

4.5. The Settlement is Reasonable, Consistent with Law and the Public Interest

The last two inquiries under the all-active party analysis examine whether any settlement terms contravene statutory provisions or prior Commission decisions and whether the settlement contains sufficient information to permit the Commission to discharge its future regulatory obligations. Of course, as the parties recognize, this examination must permit the Commission to conclude, affirmatively, that the requirements of Rule 12.1(d) have been met.

The Joint Parties highlighted multiple factors in support the Settlement Agreement and demonstrate that it meets all criteria necessary for approval. We

discuss the factors raised by the Joint Parties or where otherwise presented during the proceeding on which we rely in this decision to conclude that the Settlement Agreement is reasonable in light of the full record, is consistent with law and in the public interest.

First, as the Settling Parties point out, the settlement finally resolves issues that have been negotiated between SCE and the Port over many years and litigated, in part, in SCE's 2012 GRC. Further, the Joint Settlement addresses and settles issues raised by ORA in its protest and during negotiation in lieu of further litigation. In this respect, the settlement is consistent with Commission policy favoring settlements,[18] which is designed to support "many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results."[19]

Second, each party was represented by experienced counsel during the course of this proceeding, including the settlement negotiations resulting in the Settlement Agreement. We are confident that this settlement is the product of arms-length negotiations. Substantively, the settlement undisputedly reflects and incorporates numerous and significant concessions made by each of the active parties not only to remove opposition to, but also to gain support for, this proposal.

Third, the Joint Parties asserted that the Settlement Agreement addresses all major issues raised in this proceeding and the substantial record developed

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[18] *See* D.09-10-046 at 8-9 (There is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation.) (citing D.88-12-083).

[19] D.08-01-043 at 10 (citing D.05-03-022).

permits the Commission to thoroughly assess the settlement's resolution of those issues. This is correct. SCE, the Port, and ORA provided timely, thorough and complete testimony, information and documentation in support of the Settlement Agreement and in response to the assigned ALJ's rulings requiring additional information. The settlement and the record developed in support of the Joint Settlement Agreement are indeed comprehensive.

Fourth, the Settling Parties stated that the settlement process was conducted in full compliance with Article 12 of the Rules, which governs settlements, and we are aware of no evidence to the contrary. The Settling Parties likewise contend that the settlement is consistent with statutory provisions and prior Commission decisions and that it has been drafted to provide the Commission with sufficient information to allow the discharge of all future obligations. Though these assertions are made in good faith, they are difficult to fully corroborate for a Settlement Agreement that extends potentially 25 years into the future. We are persuaded that with the dismissal of one provision discussed above in Section 4.1, the combination of provisions which are set in place and the adjustment mechanisms designed to address potential significant changes that may arise during the term of the agreement, such as any increase in need for electric generation capacity, make the Settlement Agreement substantially consistent with statutory provisions and prior Commission decisions.

We are also persuaded that the benefits of the Settlement Agreement are significant:

The Port's Witness Thiessen emphasized that the Settlement Agreement's rate and infrastructure installation provisions are critical to the Port's electrification fuel-switching (from diesel) and air emissions reduction goals,

particularly under the Shore Power Program.[20] The record reflects the enormous capital investment the Port has and will make to implement its Green Port Program and Clean Air Action Plan as discussed above.[21] In particular, Witness Thiessen testified that the Port and Maritime Entities will invest approximately $200 million in electrical infrastructure on the customer side of the meter to electrify the Port and to implement the Shore Power Program.[22]
Witness Thiessen emphasized that the Settlement Agreement's infrastructure provisions allow the Port and the Maritime Entities to plan and implement their capital investments necessary to provide the expanded infrastructure necessary to serve the Port's growing electric load.[23]

The Settlement Agreement is also designed to address what the Port described as current competitive pressure on its Maritime Entities and the Port in their attempts to retain and expand commercial shipping and cargo activity at the Port. As Witness Thiessen described, some of this pressure is a function of geography. Specifically, East Coast Ports have radically improved access to Asia as a result of the expansion of the Panama Canal and are closer to points of ultimate consumption and Canadian ports are closer to Asia. Other pressure arises from the existence of ports that have lower labor costs, and less aggressive environmental improvement goals than California's.

According to Witness Thiessen, the importance of the Settlement Agreement to the Maritime Entities is to gain relief from the competitive

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[20] Exhibit 2, Witness Thiessen at 1 and 17.

[21] Exhibit 2, Witness Thiessen at 2.

[22] Exhibit 2, Witness Thiessen at 18.

[23] Exhibit 2, Witness Thiessen at 18.

pressures within the industry which have made the Maritime Entities resistant to, or simply unable to, bear the costs of the Port's environmental improvement programs, including the Shore Power Program. [24] "Without significant reduction in electric supply costs, some Maritime Entities can be expected to lose shipping business and others can be expected to shift business to other ports…without a robust terminal business the Port would be unable to continue its environmental programs at their present level."[25] Maintaining California's environmental standards while sustaining economic growth are key goals to which the Settlement Agreement is aimed. When realized, these goals will yield substantial public benefits to the Settling Parties, as well as, to the City of Long Beach and the State of California.

Regarding the infrastructure provisions, Witness Thiessen was direct and clear: without upgrades to the electric distribution system, it will be impossible to electrify operations, including the provision of Shore Power.[26] Sharing of cost responsibility will further enable the installation of the backbone infrastructure necessary to the Port's electrification efforts.

Regarding the rate provisions including in the Settlement Agreement, SCE's Witness Garwacki stated:

> First, the rate discounts are designed to produce a win-win situation for the Port and SCE's ratepayers. The rates proposed in the Settlement Agreement produce positive CTMs, and enable the Port to remain competitive, ensuring that the Port will expand and electrify as much load as

[24] Exhibit 2, Witness Thiessen at 17-18.

[25] Exhibit 2, Witness Thiessen at 18.

[26] Exhibit 2, Witness Thiessen at 18.

possible, while SCE's customers benefit with each new kWh of electrification load growth that materializes at the Port.

Second, the marginal costs used to [calculate] CTM, with respect to new load, prevent cost-shifting to non-participating ratepayers because no Maritime Entity can receive this discount for new load unless its CTM is positive. While the proposed rate structure for existing loads does not feature a CTM-based discount, analysis of CTMs for existing loads resulted in positive CTMs in all cases.

Third, as specified in Section 4.h. of the Settlement Agreement, the marginal distribution and marginal energy costs used to calculate the discount for new load will be updated every time a new GRC Phase 2 decision is adopted by the Commission in a proceeding litigated by interested stakeholders.

Fourth, the marginal costs used to calculate the discount for new load, specified in Section 4.f. of the Settlement Agreement, mitigate financial risk-shifting to non-participating ratepayers because the calculations reasonably reflect the marginal cost of serving customers in Categories 1, 2 and 3 for Category 1 (*i.e.*, new load served and billed at primary or secondary voltage), the CTM will be based on the marginal cost of service at the applicable voltage. For Category 2 (*i.e.*, new load served and billed at sub-transmission voltage), the CTM will be calculated based on the marginal cost of service at sub-transmission voltage, including the Imputed Added Facilities Charge. For Category 3 customers (*i.e.*, new load *billed* at sub-transmission voltage but *served* at primary or secondary voltage), the Settling Parties agreed that it is appropriate to use the marginal costs of service at primary or secondary voltage, as applicable, for generation capacity (adjusted by the MGCC Factor), energy and customer costs. With respect to marginal *distribution* costs, as part of the settlement of Port-specific sub-transmission service issues, and taking into consideration the Imputed added Facilities Charge bill adder for this category of customers, the Settling Parties agreed that the sum of the marginal distribution costs at the sub-transmission voltage and the Imputed Added Facilities Charge

> appropriately reflect marginal distribution costs for this category of customers."[27]

To reduce ratepayer risk from rising generation marginal costs, the settlement not only ensures a positive CTM but also adjusts the MGCC Factor in the future if there are increases in generating capacity need. ORA's Witness Levin added:

> [T]he MGCCs will be updated in each GRC Phase 2, like the other marginal costs, except that an MGCC "Factor"—set at 50% for the first six years of the Settlement Agreement—will be evaluated in every other GRC. The current 50% MGCC Factor (which translates into $65 MGCC) is per se reasonable given the Commission's recent determination in D.13-10-019 (PG&E's most recent Economic Development Rate Application) that it is appropriate to set the MGCC at $0 for the five-year contracts proposed in that application. (D.13-10-019, Finding of Fact 23.) Under the terms of the Settlement Agreement in the instant proceeding, the value of the MGCC Factor will be revisited at the conclusion of SCE's 2018 GRC Phase 2 in a Tier 2 Advice Letter, subject to protest by ORA or any other interested party, with reference to other Commission decisions and applicable laws, and the Advice Letter will be effective only upon Energy Division approval. The MGCC Factor will be re-examined in alternate GRC Phase 2 proceedings in order to provide stability to the benefiting Maritime Entities while at the same time updating the value with reference to the most recent Commission precedents bearing on the issue.[28]

Finally, the Settlement Agreement requires SCE, with input from the Port, to submit periodic reports on the progress of electrification and environmental

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[27] Exhibit 2, Witness Garwacki at 15-16.

[28] Exhibit 2, Witness Levin at 16.

remediation impacts from electrification at the Port and allows ORA to seek re-opening of the settlement if anticipated progress has not been achieved.[29]

The Joint Settlement will provide SCE's ratepayers with a positive CTM even at the 50% of CTM discounted rate. Little or no cost shifting will likely occur due to the discounts and infrastructure cost reduction incentives included in the Settlement given that the load growth anticipated for the Port will be served by SCE. This in turn, will provide a greater [number of] kWhs over which SCE's fixed costs will be spread and offer the potential for rate reductions for all SCE's ratepayers as a result.[30]

Witness Levin's testimony in support of the Settlement Agreement pointed out that the existing 55 MW of Maritime Entity loads alone will provide a positive CTM, even after the rate discount. This positive CTM will be approximately $1.8 million in the first year and at current rate levels would total approximately $45 million over the 25-year term. In addition, the settlement provides SCE customers with the much larger CTM from a projected 200 MW of new Maritime Entity loads at the Port. At current rate and marginal cost levels, the CTM from these loads is expected to be between $3.5 and $8.5 million per year or $87.5 to $212.5 million over the 25-year term.[31]

The Settlement Agreement also imposes real risk on all parties, that is, SCE, the Port, and ratepayers, by assigning cost and implementation responsibility to each party. The Port has and will continue to invest enormous capital, SCE and its ratepayers will absorb the infrastructure upgrade costs for

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[29] Exhibit 2, Witness Levin at 17.

[30] Exhibit 2, Witness Thiessen at 15-16.

[31] Exhibit 2, Witness Levin at 7.

new Maritime Entity load and all parties will carry risk for the load increases anticipated for the Port over the term of the Settlement Agreement. The settlement also ensures oversight at critical implementation stages by establishing a process that enables Energy Division (ED), ORA and the public to review the progress of the Port's expansion and electrification. Thus, the settlement includes specific provisions designed to address ORA's objections, while authorizing SCE and the Port to proceed with the project.

We conclude that the settlement advances the public interest by carefully balancing the various stakeholder interests at issue. The Settling Parties' careful drafting of the settlement and their generally thorough, detailed preparation of the Joint Motion Requesting Adoption of the Settlement Agreement and sworn Joint Testimony in Support of the Settlement Agreement have advanced our review and significantly aided our timely assessment of the merits.

5. CEQA and GO 131-D Compliance

The provisions related to SCE's obligation to install 66 kV facilities raised concerns as to whether the Settlement Agreement contravenes any statutory provisions or Commission decision or is otherwise supported by the record. The concerns focused on the infrastructure provisions in the Settlement Agreement requiring SCE to install 66 kV electric facilities to serve the Port's new Maritime Entity load billed at subtransmission rates. Settlement Agreement 4.d. at 9. Related to this provision, the Settling Parties requested that the Commission include an Order to "[a]uthorize and direct SCE to install and pay for 66 kV electric facilities for the new load of all Maritime Entities that elect 66 kV service…" Settlement Agreement, 4.n.5. at 15. If the request to "authorize and direct SCE to install" 66 kV facilities would in fact authorize construction of those

facilities upon approval, then compliance obligations under the CEQA and the Commission's GO 131-D would be triggered.

Upon review of the record, we find that SCE and the Port have adequately addressed these concerns. First, in its response to the ALJ Ruling requiring additional information on these issues, SCE stated that no authority to construct was sought in this proceeding or would occur by approval of this provision. This proceeding was intended by the Joint Applicants to address the electricity rates and infrastructure charges for the Port's Maritime Entities in the context of the Port's major expansion and electrification activities. The determination of infrastructure charges necessarily required identification of the expansion or upgrading of existing distribution service facilities in order to determine the type of facilities to be constructed and the appropriate cost responsibilities allocated to SCE and the Maritime Entities' load, respectively.

However, the Settlement Agreement, upon implementation, would require separate authority to construct and so the project description necessarily raised the question of when and to what extent the Commission's oversight responsibilities for CEQA review and SCE's compliance with GO 131-D would be triggered.

With respect to CEQA, we rely on the response to the ALJ's Request for additional information on this question provided by the Port. The Port produced documentation demonstrating CEQA compliance activities over the past several years, with the City of Long Beach acting as Lead Agency. One planned project to which the Settlement Agreement provisions would apply, the Pier S Project, is currently undergoing CEQA review. The Joint Parties both acknowledged the individual Port electrification projects would be subject to CEQA. The electric utility facilities contemplated under the Settlement Agreement adopted today are

a significant and integral part of the Port's electrification activities and are included in the overall projects' scope reviewed under CEQA.

The work approved and contemplated under the Joint Settlement approved today will again trigger the Commission's CEQA oversight responsibilities upon implementation. The record shows clearly that the City of Long Beach has and will continue to act as Lead Agency for CEQA review purposes. This is entirely appropriate under the circumstances presented by the Port's electrification activities. Under CEQA, it is unnecessary for the Commission to undertake parallel or redundant environmental impact review. The Commission's role with respect to SCE's participation in the Port's electrification projects is as Responsible Agency. As such, we expect that the City of Long Beach will notify the Commission and coordinate with Commission staff regarding its CEQA review of the Port's planned and future construction that will include SCE's electric facilities construction activities contemplated under the Settlement Agreement we approve today. Accordingly, there is no need to undertake further CEQA review beyond that which is already occurring.

Likewise, we are satisfied that approval of the Settlement Agreement does not contravene the Commission's GO 131-D because while it obligates SCE to install 66 kV facilities, it does not by this approval confer the authority to construct the 66 kV facilities contemplated under the Settlement Agreement. We approve today's Settlement Agreement within the confines of the settling parties' stated intent, that is, that in approving the Settlement Agreement, SCE's obligation to construct facilities in the future at no cost to the Port's Maritime Entities is reasonable. This Order does not confer authority to undertake the actual construction of facilities nor relieve SCE of its current and future compliance obligations under GO 131-D.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on March 3, 2014, and no reply comments were filed. The Commission made minor edits to the proposed decision in response to the comments to clarify its intent that any individual party could file a future Petition to Modify this decision in order to change the Maritime Entities' discount rate if an EDR was adopted for SCE's service territory and the Maritime Entities were found eligible for the adopted SCE EDR.

4 Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Irene K. Moosen is the assigned ALJ in this proceeding.

Findings of Fact

1. The active parties, SCE, the Port and ORA all sponsor the settlement. While the two other parties, AReM and Constellation NewEnergy, Inc. are not settlement signatories, they have not opposed the settlement.

2. SCE represents the utility interests, and the Port represents the interests of both the Port and the Maritime Entities receiving electric service at the Port. ORA represents the interests of utility consumers and ratepayers and is well-situated to assess the myriad policy ramifications of the settlement on those interests.

3. The settlement expeditiously resolves issues that were the subject of years of negotiations leading to litigation in SCE's 2012 GRC and would have been litigated further in this proceeding.

4. Each party was represented by experienced counsel and the settlement is the product of arms-length negotiations.

5. There is no evidence that the settlement process was not conducted in full compliance with Article 12 of the Rules.

6. The Port's electrification and expansion projects are needed to support the expected major load growth at the Port over the next 20 years, from the current 55 MW to a projected 244 MW by 2030.

7. The Port has already made and will continue to make substantial capital investments in its on-going major expansion and electrification projects, estimated to total $4.5 billion during the next 20 years.

8. The Port will invest approximately $200 million in behind-the-meter upgrades to support the activities contemplated under the Settlement Agreement.

9. The settlement is comprehensive; it includes specific provisions that: 1) authorize SCE and the Port to proceed with the electrification and expansion projects, specifically the Clean Air Program and Shore Power program planned for the Port, that are expected to yield significant diesel fuel-switching and related air emissions reductions from shipping vessels and cargo handling at the Port; 2) offer rate and infrastructure charge discounts to Maritime Entities to incentivize load growth at the Port while addressing ORA's objections; 3) include periodic updates to the marginal distribution and marginal energy costs used to calculate the discount for new load; 4) require that the CTM be positive in order for the Maritime Entities to receive the discount; and 5) include other rate adjustments, periodic updates of various inputs to the rates applicable to Maritime Entities, and specific ratemaking treatment of Maritime Entity revenues to apply to non-bypassable charge recovery first.

10. SCE, the Port and the ratepayers will all benefit from load growth at the Port anticipated to result from the Settlement Agreement (and the companion agreement, the 2012 SCE/POLB SOC adopted in Resolution E-4573 on May 13, 2013.)

11. The Commission's future oversight is preserved through advice letter filings every other SCE GRC after the first six years of the Settlement Agreement to continue or adjust the rate discounts, the MGCC factor in the event of new need for generating capacity in SCE's service territory and through additional periodic reporting on the progress of electrification and environmental remediation at the Port.

12. The Settlement Agreement proposed a provision that would allow an automatic substitution of a "standard economic development rate (EDR)" discount methodology for the discount methodology in Appendix A adopted today if it is more advantageous to the Maritime Entities. SCE does not have an EDR tariff in effect currently and has no pending application to offer an EDR in its service territory. As proposed, this provision would remove future Commission oversight and discretion, adopt a program and rate discount that does not now exist, that is not under Commission consideration in a pending proceeding and that is not otherwise defined in the testimony or other evidence in this proceeding.

13. The Clean Air Action Plan which includes the Shore Power Program and all other Port expansion and electrification activities have been and will continue be reviewed under the CEQA with the City of Long Beach as Lead Agency.

14. SCE will comply with the Commission's General Order 131-D for future planned construction of 66 kV facilities and related electric distribution upgrades at the Port performed pursuant to the Settlement Agreement.

Conclusions of Law

1. The settlement is uncontested.
2. The three active parties fairly represent the affected interests.
3. There is no need for further review of the Settlement Agreement under the CEQA or GO 131-D in this proceeding because today's decision approving the Settlement Agreement authorizes the rates and charges related to future construction of electric distribution facilities but does not authorize the actual construction of any electric distribution facilities. Authority to construct facilities to implement the Settlement Agreement will continue to be subject to permitting and environmental review requirements under CEQA and the Commission's GO 131-D. Also, CEQA review of the planned and future construction of electrification and expansion facilities, including the facilities contemplated under the Settlement Agreement, are now and will be conducted by the City of Long Beach as Lead Agency. The Commission will perform its responsibilities under CEQA by participating in the City of Long Beach's CEQA review as a Responsible Agency for the electric utility facilities construction by SCE.
4. The SCE shall comply with the terms of the Commission's GO 131-D with respect to the construction activities it conducts to implement the Settlement Agreement.
5. Settlement Agreement should be approved if modified to remove the provision that would allow automatic substitution of a "standard EDR" discount methodology by SCE. This provision is not supported by the record and is not shown to be in the public interest. This Settlement Provision found as a subpart of Section 4.f at 11-12 should not be approved. Any Party may file a future Petition for Modification of today's decision to provide for participation by the Maritime Entities in any future EDR adopted by the Commission for SCE's

service territory if eligibility is established based on the same criteria applied to other customer applicants.

6. The Settlement Agreement, if modified to remove the provision for a substitute "standard EDR" discount methodology, is reasonable, consistent with the law and the public interest and should adopted.

7. In order to provide certainty and to avoid impairing the valid business interests of the parties, this decision should be effective today.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement provision found in Section 4f and 4.n.6. that would authorize and direct Southern California Edison Company (SCE) to substitute any future, Commission-adopted "standard economic development rate" discount methodology for the SCE service territory in place of the methodology adopted today is not approved.

2. The Settlement Agreement is approved, if modified as set forth in Ordering Paragraph 1.

3. The Southern California Edison Company shall file an advice letter proposing changes to its tariffs to implement today's decision within thirty (30) days of the effective date.

4. Application 12-12-027 is closed.

This order is effective today.

Dated _____, at San Francisco, California.